IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1366 OF 2006
[FOR LEAVE TO APPEAL]
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra. ..Applicant.

Versus

Rasikbhai Kalyani Shah. ..Respondent.

..

Mr.A.R.Patil, APP, for the Applicant-State.
Ms.Nipa Singh, Adv. i/b. M/s. Mahesh Menon & Co. for the Respondent.

..

CORAM : SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 04, 2007.

P.C.:

1. The applicant-State of Maharashtra has filed this application for leave to appeal against the judgment and order of acquittal dated 27.12.2005 passed by the learned JMFC, Madha, Solapur in R.C.C. No.228/2005. By the said judgment and order, the learned Magistrate acquitted respondent No.1-orig.accused of the offences punishable under Sections 279, 304-A, 337, 338 of Indian Penal Code and 184 of Motor

Vehicle Act.

2. Heard the learned APP for the applicant-State and the Advocate for the Respondent.

3. The case of the prosecution is that the respondent drove his car in rash or negligent manner and gave dash to bullock-cart and thereby the offences were committed. In the said incident, Khandu and Jaysing Waghmare lost their lives. In the present case only PW-1 Laxman Bhange has been examined. He is the informant in the said case. It is the prosecution case that PW-1 Laxman Bhange is the eye witness to the incident. However, PW-1 Laxman has stated that when he reached the spot, already one Icon vehicle and bullock-cart had dashed with each other. He has stated that the Icon vehicle was lying in the ditch and wheels of the cart were lying here and there. He has further stated that the people travelling in the Icon vehicle were found injured. It is to be noted that in the cross-examination Laxman has categorically stated that he has not

witnessed the incident personally. Besides this witness, no other witness has been produced by the prosecution. Thus from the record it is seen that no witness implicates the respondent-accused as having driven the vehicle in rash or negligent manner. The learned Magistrate has taken all these aspects into consideration and has thereafter acquitted the respondent-accused.

4. Looking to material on record, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

5. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial

Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for. Application for leave to appeal is rejected. Consequently, Appeal also stands dismissed.

(SMT.V.K.TAHILRAMANI,J.)